

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

XEZAKIA ROUSE,

Plaintiff,

v.

No. CIV 10-1094 JP/GBW

C.O. CRUZ,

Defendant.

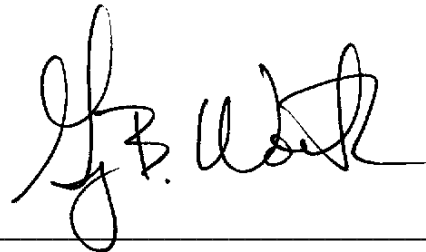
ORDER DENYING MOTION FOR DEFAULT JUDGMENT

This matter is before the court on Plaintiff's Motion for Default Judgment against Defendant Cruz filed on April 7, 2011. *See Doc. 11.*

While Defendant Cruz has since been served, he had not been at the time the Motion was filed. In fact, because Plaintiff's case is covered by the Prisoner Litigation Reform Act ("PLRA"), Defendant Cruz need not respond until ordered to do so by this Court. *See Jones v. Bock*, 549 U.S. 199, 213-14 (2007) ("[U]nlike in the typical civil case, defendants do not have to respond to a complaint covered by the PLRA until required to do so by the court."). Since the date of Plaintiff's Motion, Defendant Cruz has been ordered to answer, but the answer is not due for at least 30 days. *See Doc. 41* (giving Defendant Cruz 30 days from personal service of Order to answer). "[A]n entry of default against [a defendant], before it had any obligation to file an answer, would [be] incorrect as a matter of law." *Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir. 2003).

Moreover, “[u]nder the explicit language of [the PLRA], prisoner plaintiffs filing suits under § 1983 are not entitled to entry of default judgment against a defendant who has been properly served, but nevertheless has not filed any reply.” *See* 42 U.S.C. § 1997e(g)(1).

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Default Judgment (Doc. 11) is **DENIED**.

A handwritten signature in black ink, appearing to read "J. B. Wood", is written above a horizontal line.

UNITED STATES MAGISTRATE JUDGE